

Town Council Meeting: 13 June 2011



Town of Garrett Park
PO Box 84
4600 Waverly Avenue
Garrett Park, MD 20896

Regular Meeting of Town Council
Garrett Park Town Hall
10814 Kenilworth Avenue
Garrett Park, MD 20896

MINUTES

Call to Order: Mayor Keller called the meeting to order at 7:35 PM. Present were Councilmembers Irons, Mandel, Petito, Schulp, and Wegner. Also present was Administrator Pratt, Barbara Collier of the *Bugle*, and a number to Town residents.

Approval of Agenda: The agenda was approved as posted without objection.

Public Hearing:

- Variance Application 20110419-VA01, 4700 Waverly Avenue - Birdsong: Relief from setback requirements - Mayor Keller opened the hearing at 7:40 PM and turned the floor over to Councilmember Irons, who reviewed the applicable standards for variance consideration with the Council, and noted that both the Historic Preservation Committee (HPC) and the Setback Advisory Committee (SAC) have filed advisory reports. Councilmember Irons then asked the applicants if they wished to address the Council.

Mr. & Mrs. Birdsong reviewed the application with the Council, noting the constraints imposed by the narrowness and small size of the lot, and that the proposed construction complies with current Garrett Park Floor Area Ratio (FAR) and lot coverage requirements. He also noted that they had spoken with all of their neighbors, and none had objected to their plans. Councilmembers Mandel and Irons discussed the location of the proposed addition as it related to the existing Montrose-side fence with Mr. Birdsong. Councilmember Irons asked about the status of the Historic Area Work Permit (HAWP) application filed with the county. Mr. Birdsong stated that a positive staff report had been issued but the formal review had been postponed, awaiting action by Town and County on the request for variances. He also noted that they have not applied with the County for a variance, as they are waiting for the Town's action.

Councilmember Irons asked SAC Chair Harry Gordon to present the SAC report (attached to these minutes). After Mr. Gordon reviewed the SAC report with the Council there was extended discussion regarding both the practical and policy effects of the prior variance granted by the County and the Town in 1963 that permitted the initial construction of the home, focusing on the question of whether a variance can be granted on a

property that previously has been granted a variance thereby making a non-conforming structure more non-conforming. Mayor Keller said that the Town's counsel had indicated that the prior grant of a variance did not preclude the grant of an additional variance on a property, but that it was a factor the Council could take into consideration. There was also discussion regarding the effect of building setback line regulations, both current and historic, Town and county, on corner lots.

Councilmember Irons asked HPC Chair Nancy Schwartz to present the HPC report (attached to these minutes). Mrs. Schwartz noted that the committee concentrated on the effect of the proposed addition on the Historic District and how it comported with the open space preservation objectives of Garrett Park's ordinance.

Councilmember Irons asked for residents and neighbors' comments. Neighbor Vicky Bailey spoke in support of the application.

Councilmember Wegner stated that it would be helpful to know the size of the increase in the building in the setback zone if the requested variance were approved. Councilmember Petito indicated that a brief search of the county Board of Appeals (BOA) decisions posted on line indicates that the BOA has granted variances to structures with prior variances. Councilmember Irons asked Harry Gordon about how many similar lots in Town there might be, for the Council's consideration in assessing the potential precedential effect of a decision on this application. He said that the SAC would gather the information for the Council.

Councilmember Petito noting the documented practical difficulties facing the applicant that derived from characteristics of the lot, and the positive nature of the SAC and HPC reports, indicated that he was inclined to grant the request, and that it was essential to craft a decision on the variance that was narrowly drawn, clearly reflecting the specific facts of this case and the basis for the Council's decision, in order to appropriately delimit the precedential effect. Councilmember Schulp agreed, noting that there was no reference to the building line in the initial BOA opinion, this being a later, added restriction on the lot.

Councilmember Mandel, noting the requirement in the ordinance to grant the least departure necessary to grant relief, asked Harry Gordon to comment on the relief sought in this application. Mr. Gordon commented that this was, in his judgment, a modest and reasonable proposal, staying within the 18% lot coverage and complying with the required 3.75 FAR, and that the applicant has not asked for the most relief that they might have sought.

Councilmember Wegner expressed concern about the Council being consistent in its review of variance applications, stating that while he agrees that the lot is clearly sub-standard, it has already been granted a variance, and the applicants knew of these conditions when they purchased the house. Councilmember Wegner stated that he does not see the case for a hardship or difficulty warranting the relief requested, because he feels the circumstances presented are the result of actions

taken by the applicant and do not arise solely out of characteristics of the lot.

Mr. Birdsong stated that he believes that hardship has been proven.

Mayor Keller discussed with Council how to proceed.

Councilmember Irons **MOVED**

That the variance hearing be continued, pending receipt of further information requested from the SAC. Councilmember Wegner seconded the motion, noting his willingness to call a special meeting to reconvene the hearing, if appropriate. After discussion, it was the sense of the Council that a special meeting could be called if the requested additional information were gathered and the Mayor, in consultation with the Council, thought it was appropriate to do so, and the motion was **PASSED**, with Councilmembers Irons, Mandel, and Wegner voting 'Aye,' and Councilmembers Petito and Schulp voting "Nay."

The hearing was adjourned at 8:50 PM.

Presentations by Residents:

- Resident Gerilee Bennett updated the Council on the Community Center renovation project and thanked the Town for co-hosting the groundbreaking reception at the Center on Sunday, June 12th. She reported that Albrecht Construction has been awarded the contract and the demolition phase is well under way, with completion due by the end of October. Mrs. Bennett said that Town representatives are welcome to visit the site at any time, but that scheduled visits were preferable. Also, Mrs. Bennett noted the difficulty in getting temporary access to water. Councilmember Schulp said that he had contacted Holy Cross, but had not heard back. Mayor Keller noted that the elementary school was due to be completed in December, but that he doubted that schedule would hold and asked what the Nursery School planned to do if this was the case. Mrs. Bennett stated that the first choice was to open in the Community Center if it was safe to do so, otherwise, they would remain at the Ken-Gar facility, but would ask Montgomery County Public Schools (MCPS) to pay their rent.
- Resident Bonnie Tyler updated the Council on Seniors Committee activities, noting its mission is to define the needs of Garrett Park seniors and to develop programs to serve those needs. Ms. Tyler noted that staying in their own homes safely and comfortably is a primary concern for many seniors, and that the committee appreciates the support of the Council. Resident Florence Gootenberg briefed the Council on the committee's outreach to seniors who are housebound. Assistant to the Town Administrator Elizabeth Henley reported that using voters roll data it appears that close to 1/3 of Garrett Park residents are over 55, that the committee has been meeting regularly since 2009, and that as well as developing an Aging in Place support network, the committee is also developing inter-generational activities.

- Resident Marion Green reviewed the Archives Committee Report recently distributed to the Council, noting that the committee seeks specific resources, including a computer program, PastPerfect, which is specifically designed to manage archival collections, a computer and accessories to run the program, as well as a number of other items. Administrator Pratt agreed to expedite the process to purchase these items, and will work with the committee to finalize a purchase order.
- Mr. Witten of 10802 Kenilworth spoke to the Council regarding the denial of his application to install 2 driveways in the 4800 block of Oxford St. Mayor Keller pointed out he was entitled to a drive for both his lots and that is why the permit for lot 9 was granted on Kenilworth Ave.; he stated that safety was the reason for not granting the two permits on Oxford St. Councilmember Mandel agreed to meet with Mr. Witten and report back to the Council.

Mayor's Report:

- Mayor Keller reported that the various Oxford St. easements related to the new elementary school are completed save one, which relates to the sanitary sewer on the north side of Oxford. The Mayor noted that WSSC will not entertain an easement with tree preservation similar to the easements the Town had granted to Montgomery County Public Schools (MCPS), and to resolve this, he was seeking to have MCPS take ownership of the sewer line in question.

Councilmember's Reports on Areas of Responsibility:

- Councilmember Irons reported on the recent land use forum, which attracted 35-40 attendees, noting that the PowerPoint presentation made at the forum was to be posted on the website and made available in hard copy at the Town Office, and that she was working on a follow-up meeting with the Garrett Park Citizens Association. Councilmember Irons stated that it was time for the Council to begin work on developing ordinances to implement the recommendations of the Land Use Task Force.
- Councilmember Petito reported that the Parks and Open Space Committee would like to replace the Cambria Court fence along the street and to continue the landscaping from the pool area to Manny's Woods. Administrator Pratt agreed to review the budget in order to fund this project as soon as possible, the cost of which is estimated to \$3,700 - \$4,300.

Approval of Minutes:

- Councilmember Wegner **MOVED**
That the minutes of the 05/09/2011 Regular Council Meeting be approved as corrected. Councilmember Irons seconded the motion, which **PASSED** unanimously.

Action/Discussion:

- Local Government Insurance Trust (LGIT) Resolution - Mayor Keller presented the resolution that LGIT had requested the Town adopt, ratifying action taken by the LGIT Board of Trustees.

Councilmember Petito **MOVED**

That the Council adopt Resolution 2011-01 approving and accepting the Ninth Amended and Restated Trust Agreement of the Local Government Insurance Trust (the "Trust") as distributed to the Council (attached to these minutes). Councilmember Irons seconded the motion, which was **PASSED** unanimously.

- FY 2011 Budget Transfers - Mayor Keller asked that consideration of the FY 2011 budget transfers be deferred at this time, in light of the recently received requests from the Archives and Parks Committees, so that the Town Administrator can make any necessary changes. As these were adjustments within the adopted budget, the Mayor stated that consideration could take place at the July meeting. This was agreed to without objection.
- Capital Projects Update - Mayor Keller presented a brief update (attached to these minutes), with a more detailed report to follow.
- Ordinance 2011-04: Amending the FY 2012 Capital Budget - Mayor Keller asked for introduction of this ordinance, noting that the only changes were to accommodate the capital projects being developed by Chester Engineers, including the Kenilworth Ave. and Oxford St. sidewalks, repairs to the North Kenilworth and Shelley Court Drains, and curb and gutter work along lower Argyle Ave. and Northern Kenilworth Ave.

Councilmember Petito **MOVED**

That the FY 2012 Operating & Capital Budget adopted under Ordinance 2011-03 be amended as follows:

- 1) Receipts: Account 9000 - Transfers In is changed to \$332,755;
- 2) Expenditures: Account 23000-Transfers to Capital Project Fund in changed to \$494,520; and
- 3) The Capital Budget as enumerated in the column "Proposed Changes" under the heading "FY 2011," by adding \$149,805 for a new total of \$494,420.

Councilmember Wegener seconded the motion. Mayor Keller noted that the new total for the FY 2012 budget would be \$1,402,555. There was brief discussion, after which the motion was **PASSED** unanimously.

- Cancellation of the August Council Meeting - Mayor Keller asked if the Council wished to cancel the August meeting.

Councilmember Wegner **MOVED**

That the August Council meeting be cancelled. The motion was seconded by Councilmember Schulp, and was **PASSED** unanimously.

Town Administrator Report:

- Monthly Financial Report – Administrator Pratt reviewed the Monthly Financial Report with the Council.
- Permits Report – Administrator Pratt will forward an updated report to the Council.

Adjournment: The meeting adjourned at 10:15 PM.

Respectfully submitted,

[TOWN SEAL]

Edwin Pratt, Jr.

Edwin Pratt, Jr., Clerk-Treasurer

From: Harry.Gordon@burthill.com
Date: May 18, 2011 9:02:09 PM EDT
Subject: 4700 Waverly Avenue - Variance Report

Dear Members of the Garrett Park Town Council

This is the report of the Garrett Park Setback Advisory Committee regarding the permit and variance applications for 4700 Waverly Avenue.

Background

The owners of 4700 Waverly Avenue have applied for a building permit and a variance for the renovation and expansion of the main building. The two applications were submitted together since it was determined that a building permit for the proposed construction could not be approved without a variance. The applicants are proposing a two-story addition on the southeast side of the existing main building (in the direction of the Atlee property at 10938 Montrose Ave) and a covered entry porch on the northeast side, adjacent to Montrose Ave. This is a corner lot and virtually no addition to the existing main building is possible without a variance, since front setback requirements apply to the Waverly and Montrose sides.

Analysis

A variance is required from the front setback requirement along Montrose Avenue. The proposed covered porch would be 13 feet from that property line and the proposed two-story addition would be 22.8 feet from that property line. The established building line on Montrose Avenue is 36.5 feet, since the adjacent main building at 10938 Montrose Ave is set back 43 feet from the front property line. Therefore, the proposed covered porch would require a variance of 23.5 feet and the proposed two-story addition would require a variance of 13.7 feet.

A variance is also required from the side setback requirement to the adjacent property at 4702 Waverly Avenue. The required side setback is 10 feet and the proposed two-story addition would be 8.8 feet from the property line. A variance of 1.2 feet would be required.

The rear setback to the proposed two-story addition would be 29.5 feet, which is greater than the required 25 feet.

The lot coverage of the existing and proposed construction will not exceed 18% of the 5,358 square-foot lot, which conforms with the GP ordinances. The proposed FAR will be 0.348, which is in conformance with the maximum allowable of 0.375.

Conclusion

It is the conclusion of the SAC that the applicants have demonstrated that the corner lot setback requirements and the small size of the lot are exceptional characteristics to the property that should be considered for the potential issuance of a variance. The SAC also concludes that without a variance it would be virtually impossible to construct any addition to the existing main building on this property.

Respectfully submitted,

Garrett Park Setback Advisory Committee

Historic Preservation Committee Report
To the Garrett Park Town Council
On the Variance Request for 4700 Waverly Avenue

History: The present Lot Pt. 12 was created in 1952 when original lot 12 (along with lots 13 and 14) was subdivided by the Lester Family who lived in the house at 4702 Waverly. Within two years, the Town was subject to R-60 zoning. As a result, this small corner lot could not be built on without significant variances from the required side yard set backs. The family applied for variances to build the house that now exists on the lot in 1962. These were granted by the County without the Town's knowledge and with disregard for the Town's more stringent 10' side setback. It is unclear what action the Town might have taken, since the window for appeal had already closed by the time the Town was informed. In the end the Town, County, and owner agreed on a slight adjustment to the location of the house which moved it three feet closer to 4702 Waverly in order to make the variance on the Montrose Avenue side a bit smaller.

The house that was erected on the lot in 1963 is a very simple two-story L-shaped brick structure with low-hipped roof and wide eaves. It has very little ornament. What ornament there is—divided light windows, shutters, door surround, molded panels beneath the first floor windows—give a slight nod to Colonial Revival styles popular at the time. It is listed as a non-conforming/out-of-period structure in the Garrett Park Historic District. It sits on a prominent corner in Garrett Park, across from the two oldest houses in Town and next to the 1890 house at 4702 Waverly.

The present owners are applying for variances from both side yards to construct a two story addition to the rear of the house and a side porch on the Montrose Avenue side. As the Set Back Committee has pointed out, the side yard requirements are now even more stringent than when the house was built and without a large variance, it would be virtually impossible to add to the house.

The Historic Preservation Committee decided to proceed on the premise that, whatever the merits of originally building on such a small corner lot, the house already exists and we would examine whether the proposed additions had a pronounced impact on open space or a negative impact on adjacent historic buildings. The proposed addition uses different materials and steps back from the side lines of the original house. It clearly announces itself as an addition and one that is subsidiary to the original building. The step back will serve to break up the wall plane along Montrose Avenue. The addition does not extend into either side yard as far as the original house does. It will not encroach upon the property behind it (10938 Montrose), and it does not exceed 18% lot coverage. The proposed rear addition will obstruct the view of the rear of the Victorian-era house at 4702 Waverly from Montrose Avenue,

but the portion of the Waverly residence that the addition will most obstruct is a later rear addition, made to 4702 Waverly in the 1980's. From the Waverly Avenue side, the proposed addition will step back farther from the side of 4702 Waverly than the present house does. As a result, it did not seem to the Committee that the addition would have a pronounced impact on open space nor on the neighboring Victorian structure.

In terms of the materials and appearance of the addition, the Committee liked the use of building materials different from those of the original house. As one member put it, "It makes the house look like it has a history." There are only two other brick houses in the historic district. Neither occupies such an important corner location nor is in such close proximity to a signature Victorian structure. The addition may serve to soften the rather stark lines of the original house.

The side porch, unlike the addition, does encroach even more into the Montrose Avenue building line than the original house. It is, however, a minimal structure, and like the addition, helps to articulate the side wall of the original house.

In conclusion, the Committee finds that the proposed addition does not have a negative impact on the historic district and may serve to make the nonconforming house a bit more compatible with its significant Victorian-era neighbors. We also plan to submit this report to the County Historic Preservation Commission which will be considering a Historic Area Work Permit for the proposed addition.

Resolution 2011-01

A RESOLUTION of the Garrett Park Town Council approving and accepting the Ninth Amended and Restated Trust Agreement of the Local Government Insurance Trust (the "Trust"):

WHEREAS, Garrett Park is a Member of the Trust and a party to the Eighth Amended and Restated Trust Agreement dated July 1, 2004; and

WHEREAS, the Board of Trustees of the Trust has recommended to the Trust membership certain amendments to the Eighth Amended and Restated Trust Agreement which modify the composition of the Board of Trustees and should facilitate governance of the Trust's affairs by the Board of Trustees; and

WHEREAS, the amendments have been presented the Trust membership in the form of a two-page document entitled Recommended Amendments to the Eighth Amended and Restated Trust Agreement, and which the specific amendments to Article II, Section 2.02 have been reviewed by the Town Council and the Town Attorney; and

WHEREAS, by approving the recommended amendments to Article II, Section 2.02 of the Eighth Amended and Restated Trust Agreement Garrett Park is consenting to and accepting the Ninth Amended and Restated Trust Agreement, which incorporates the amendments.

NOW, THEREFORE, BE IT HEREBY RESOLVED this 13th day of June, 2011, by the Garrett Park Town Council that the Ninth Amended and Restated Trust Agreement of the Local Government Insurance Trust is approved and accepted, and that the Mayor and Clerk-Treasurer are hereby authorized and directed to take any and all action necessary or appropriate, including execution and delivery all documents and certificates, in connection with the approval and acceptance of the Ninth Amended and Restated Trust Agreement of the Local Government Insurance Trust.

Christopher Keller

Christopher Keller, Mayor

Attest true copy,

Edwin Pratt, Jr.

Edwin Pratt, Jr., Clerk-Treasurer

[SEAL]



Town Office

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MEMORANDUM

To: Chris Keller, Mayor
From: Ted Pratt
Re: Status of Capital Projects
Date: 06/13/2011

Here is a status of the various Capital Projects, as reported today by Chester Engineers. I will put together a more detailed report this week.

Kenilworth Sidewalk:

- Preliminary design for Kenilworth Ave (north of Strathmore) received on 05/23.
- Survey for Kenilworth Ave and Oxford Street (south of Strathmore), completed on 06/02.
- Preliminary design for Kenilworth Ave (north of Strathmore) received on 06/08.
- Storm water Management Concept is ready for submission to the county, application for signature and request for fee were sent today 06/13.

Kenilworth Road Drainage and Improvements at Argyle/Rokeby

- Survey crew is in the field today 06/13 finalizing the topo survey.

Kenilworth Storm Drainage

- New contract amendment will be sent by Chester Engineers to reflect the changes (i.e. design for 25-yr storm, private SD, etc.) based on the 05/11 meeting.

Shelley Court Drain

- Negotiations with Parkside Condominiums on right-of-entry agreement are nearly complete.
- Easements from 10702 & 10704 Keswick remain to be negotiated.